

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ITRON, INC.,
Petitioner,

v.

SMART METER TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2017-01199
Patent 7,058,524 B2

Before BRYAN F. MOORE, BARBARA A. BENOIT, and
JOHN D. HAMANN, *Administrative Patent Judges*.

HAMANN, *Administrative Patent Judge*.

ORDER

Denying Authorization to File a Motion to Expunge
37 C.F.R. § 42.5

On May 29, 2018, a conference call was held with the parties to discuss Petitioner's request for authorization to file a motion to expunge Patent Owner's Observations on Cross-Examination (Paper 26). Prior to the conference call being held, Petitioner filed its Response (Paper 27) to Patent Owner's observations in accordance with the Scheduling Order (Paper 9).

During the conference call, Petitioner argued Patent Owner's observations on cross-examination are improper because (1) the observations are about the Patent Owner's own witness's testimony, (2) the observations are about testimony taken prior to the filing of the Patent Owner Response, or (3) the observations regarding completeness of testimony under Fed. R. Evid. 106 ignore that Petitioner also addressed the purported additional relevant testimony and filed the entire deposition transcript. Patent Owner opposed Petitioner's request, including by arguing that Patent Owner's observations were necessary to place the testimony cited in Petitioner's Reply (Paper 21) in the proper context.

Having considered the parties' arguments, we deny Petitioner's request for authorization to file a motion to expunge Patent Owner's Observations on Cross-Examination. During the conference call, Petitioner agreed that any harm potentially caused by Patent Owner's purportedly improper observations was cured by Petitioner's filing of its Response to the observations. Thus, under the particular circumstances presented here, we do not authorize Petitioner's request for authorization to file a motion to expunge.

It is hereby:

ORDERED that Petitioner's request for authorization to file a motion to expunge is *denied*.

IPR2017-01199
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